

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

JOSE GOMEZ,)	
)	
Plaintiff,)	
)	
vs.)	Cause No: 1:20-cv-2422
)	
WESLEY BEACHY and)	
K AND K TRUCKING, INC.,)	
)	
Defendants.)	
_____)	

NOTICE OF REMOVAL

Defendants, Wesley Beachy and K and K Trucking, Inc. (collectively, “K and K Defendants”), by counsel, pursuant to 28 U.S.C. §§ 1441, 1446 and 1332, hereby give notice of removal of this action from the Superior Court of Marion County, Indiana, to the United States District Court for the Southern District of Indiana, Indianapolis Division, and in support thereof state the following:

Background

1. On August 19, 2020, Plaintiff filed a Complaint for Damages in the Superior Court of Marion County, Indiana, under Cause No. 49D04-2008-CT-028382. (*See* Plaintiff’s Complaint).
2. Plaintiff’s Complaint for Damages alleges that on December 5, 2019, Plaintiff was involved in a commercial motor vehicle accident with the K and K Defendants on I-65 North in the City of Indianapolis in Marion County, Indiana, and that Plaintiff sustained personal injuries as a result of the accident. (*See* Complaint for Damages).

3. Venue is proper in this Court pursuant to 28 U.S.C. §§ 94(b)(1) and 1441(a), because the United States District Court for the Southern District of Indiana, Indianapolis Division, is the federal judicial district and division embracing the Superior Court of Marion County, Indiana, where this action is pending.

4. By filing this Notice of Removal, K and K Defendants do not waive their rights to object to service of process, the sufficiency of process, jurisdiction over the person, or venue, and K and K Defendants reserve the right to assert any defenses and objections to which they may be entitled.

5. This Court has original subject matter jurisdiction under 28 U.S.C. § 1332 and this case is removable under 28 U.S.C. §§ 1441 and 1446, as set forth below.

Removal is Timely

6. 28 U.S.C. § 1446(b) provides the following time limitation on removal of civil actions:

The notice of removal of a civil action or proceeding shall be filed **within 30 days after the receipt by the defendant**, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within thirty days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.

(emphasis added).

7. K and K Trucking, Inc. was served on August 22, 2020, and Wesley Beachy has not yet been served. As such, this removal is filed within that thirty day deadline and, therefore, removal is timely pursuant to 28 U.S.C. § 1446(b).

Complete Diversity of Citizenship Exists Among the Parties

8. Plaintiff Jose Gomez is a citizen of the State of Indiana.

9. Defendant Wesley Beachy is a citizen of the State of Michigan.

10. Defendant K and K Trucking, Inc. is a citizen of the State of Michigan, as it is incorporated under the laws of the State of Michigan and maintains its principal place of business in Michigan.

11. The controversy in this action is therefore entirely between citizens of different states of the United States, and K and K Defendants desire to remove said cause from the Superior Court of Marion County, Indiana, to the United States District Court for Southern District of Indiana pursuant to 28 U.S.C. 1332(a)(1) and 1441(a).

The Amount In Controversy Requirement is Satisfied

12. The amount in controversy requirement of 28 U.S.C. § 1332 is also satisfied. Under 28 U.S.C. § 1332(a), the amount in controversy in a case where federal jurisdiction is based on diversity of citizenship must exceed \$75,000, exclusive of interest and costs. The defendant invoking federal jurisdiction has the burden of proving by a preponderance of the evidence that the amount in controversy meets the jurisdictional minimum. *Meridian Sec. Ins. Co. v. Sadowski*, 441 F.3d 536, 543 (7th Cir. 2006). Where, as here, the Complaint does not specify the amount in controversy, the removing defendant must show “a reasonable probability” that the jurisdictional minimum has been met. *Malinowski v. Walgreen Co.*, NO. 2:08-CV-173 RM, 2008 WL 2704740, at *3 (N.D. Ind. July 3, 2008) (citing *Brill v. Countrywide Home Loans, Inc.*, 427 F.3d 446, 449 (7th Cir. 2005)). “[A] good-faith estimate of the stakes is acceptable if it is plausible and supported by a preponderance of the evidence.” *Oshana v. Coca-Cola Co.*, 472 F.3d 506, 511 (7th Cir. 2006).

13. In his complaint, Plaintiff alleges “permanent injuries and damages” as well as incurred medical bills, physical and mental pain and suffering, property damage, lost ability to perform usual activities, and diminished quality of life. (Plaintiff’s Complaint, ¶¶ 8-10.)

14. Further, on August 27, 2020 in email communication, Plaintiff’s counsel confirmed that he could not stipulate the amount in controversy was less than or equal to \$75,000, exclusive of interest and costs, in this case.

14. Accordingly, the amount in controversy requirement is satisfied.

Removal is Appropriate

15. This Court has original subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(a) and removal is appropriate pursuant to 28 U.S.C. §§ 1441 and 1446 because there is complete diversity of citizenship among the parties and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

16. K and K Defendants attach as Exhibit “A” all pleadings, motions, orders, and all other filings filed in the state court, in compliance with 28 U.S.C. §§ 1446(a).

17. This Notice of Removal is being served upon Plaintiff and contemporaneously filed with the Clerk of Superior Court of Marion County, Indiana pursuant to 28 U.S.C. § 1446(d).

18. The filing fee of \$400.00 has been paid to the Clerk of the United States District Court at the time of filing this Notice of Removal.

19. A copy of K and K Defendants’ Notice to Plaintiff and Clerk of the Marion County Superior Court of Defendants’ Application to Remove Cause to Federal Court is attached hereto as Exhibit “B.”

Respectfully submitted,

By: s/ Ryan O. Farner
Erin A. Clancy, I.D. No. 21962-49
Ryan O. Farner, I.D. No. 29599-02
*Attorneys for Defendant, Wesley Beachy and
K and K Trucking, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on September 18, 2020, the foregoing was served upon the following via regular mail and/or the Court's electronic filing/notification system, on all parties of record:

s/ Ryan O. Farner
Ryan O. Farner

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